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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,302	09/11/2003	Robert W. Nelson	NELSR-P01	7815
23653	7590	06/20/2008	EXAMINER	
FRANK G MORKUNAS			LASTRA, DANIEL	
7750 DAGGET ST				
SUITE 203			ART UNIT	PAPER NUMBER
SAN DIEGO, CA 92111			3688	
			MAIL DATE	DELIVERY MODE
			06/20/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/661,302	NELSON, ROBERT W.	
	<b>Examiner</b>	<b>Art Unit</b>	
	DANIEL LASTRA	3688	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 13 December 2006.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-19 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-19 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

1. Claims 1-19 have been examined. Application 10/661,302 (ADVERTISING SYSTEM) has a filing date 09/11/2003.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-19 are rejected under 35 U.S.C. 101 because said claims are presented as system claims however, said claims do not present structure (i.e. apparatus) as tangible medium is defined by Applicant's specification as wireless medium.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Said system claims are indefinite because said claims do not present structure (i.e. apparatus).

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Said claims recite “tangible medium from which said advertisement is placable”. For purpose of art rejection, said limitation would be interpreted as meaning “tangible medium”.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims are rejected under 35 U.S.C. 102(a) as being anticipated by Magazine Advertising Guide for Small ISVs ([http://www.ericsink.com/Magazine\\_Advertising.html](http://www.ericsink.com/Magazine_Advertising.html)).

Claim 1, Magazine Advertising Guide teaches:

An advertising system comprising the steps of:

providing advertising space to a party for an advertisement (see page 6, paragraph 4);

charging an advertising cost for said advertising space (See page 6); and

incrementally decreasing said advertising cost for each incremental increase to said advertising space (see page 6).

Claim 2, Magazine Advertising Guide teaches:

wherein said advertising space comprises any tangible medium from which said advertisement is placable and from which said advertisement can be perceived,

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reproduced, or communicated either directly or with aid of a machine or a device (see page 6).

Claim 3, Magazine Advertising Guide teaches:

offering one or more discount amount to a consumer on an asking price for a subject matter of said advertisement (see page 6).

Claim 4, Magazine Advertising Guide teaches:

said consumer selecting one or more of said one or more discount amount and providing information about said consumer to a requesting medium (see page 6).

Claim 5, Magazine Advertising Guide teaches:

said requesting medium conveying said information to said party and providing to said consumer a certificate reflecting said consumer's selection (see page 6 "contract").

Claim 6, Magazine Advertising Guide teaches:

compiling a report to said party wherein said report comprises a value between said advertising cost and a frequency of certificates provided on each subject matter of said advertisement (see page 6 "6 insertions at a 12x rate").

Claim 7, Magazine Advertising Guide teaches:

receiving from said party a discount amount for a consumer to an asking price for a subject matter of said advertisement wherein a larger of said discount amount generates an increase in said advertising space and a decrease in said advertising cost (see page 6).

Claim 8, Magazine Advertising Guide teaches:

wherein said discount amount ranges from between none to approximately 90% of said asking price (see page 6).

Claim 9, Magazine Advertising Guide teaches:

wherein decreases to said advertising cost are between approximately none when said discount amount is none and up incrementally to 100% as said discount amount is incrementally increased (see page 6)

Claim 10, Magazine Advertising Guide teaches:

wherein increases to said advertising space over a basic space amount are between none when said discount amount is none and up incrementally, as overall space permits, as said discount amount is incrementally increased (see page 6).

Claim 11, Magazine Advertising Guide teaches:

compiling a report to said party wherein said report comprises a value between said advertising cost and a frequency of consumer requests for a discount to any asking price for any one subject matter of said advertisement (see page 6 “contract”).

Claim 12, Magazine Advertising Guide teaches:

An advertising system comprising the steps of:

providing advertising space to a party for an advertisement (see page 6);  
charging an advertising cost for said advertising space (see page 6); and  
receiving from said party one or more discount amount to an asking price for a subject matter of said advertisement and offering said one or more discount amount to a consumer, wherein each incrementally larger of said discount amount offered by said

party to said consumer generates an incremental increase in said advertising space and an incremental decrease in said advertising cost (see page 6).

Claim 13, Magazine Advertising Guide teaches:

wherein said advertising space comprises any tangible medium from which said advertisement placable and from which said advertisement can be perceived, reproduced, or communicated either directly or with aid of a machine or a device (see page 6).

Claim 14, Magazine Advertising Guide teaches:

wherein said discount amount ranges from between none to approximately 90% of said asking price (see page 6).

Claim 15, Magazine Advertising Guide teaches:

wherein decreases to said advertising cost are between approximately none when said discount amount is none and up incrementally to 100% as said discount amount is incrementally increased (see page 6).

Claim 16, Magazine Advertising Guide teaches:

wherein increases to said advertising space over a basic space amount are between none when said discount amount is none and up incrementally, as overall space permits, as said discount amount is incrementally increased (see page 6).

Claim 17, Magazine Advertising Guide teaches:

a consumer selecting one or more of said one or more discount amount and providing information about said consumer to a requesting medium (see page 6).

Claim 18, Magazine Advertising Guide teaches:

said requesting medium conveying said information to said party and providing to said consumer a certificate reflecting said consumer's selection (see page 6).

Claim 19, Magazine Advertising Guide teaches:

compiling a report to said party wherein said report comprises a value between said advertising cost and a frequency of certificates provided on each subject matter of said advertisement (see page 6).

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- Forward (US 6,578,011) teaches a buyer seller matching system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 571-272-6720 and fax 571-273-6720. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ERIC W. STAMBER can be reached on 571-272-6724. The official Fax number is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/DANIEL LASTRA/  
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June 18, 2008